

In Our View: Schools Back in Spotlight

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While missing the target on its premise, a recent court briefing from a group of lawmakers at least returns the spotlight to the state Supreme Court's ruling regarding charter schools.

That illumination could be beneficial, as the court indeed should reconsider the decision that overturned Initiative 1240, which was approved by voters in 2012 to allow for the creation of charter schools in the state. That 6-3 ruling in September declared that charter schools are unconstitutional because they are not "common schools" beholden to an elected school board. If taxpayers are funding the school, the logic goes, then they should have governing power over them.

The decision led to consternation from charter school supporters and head-scratching from many others. Among the problems was that the court deliberated the case for nearly a year before announcing the decision on the Friday before Labor Day — when the school year had already started in many locales and was about to get underway everywhere else.

That was a logistical problem with the ruling. The fundamental problem was that the court relied upon a 1909 precedent to define "common schools." It was, at best, a legal stretch. As Philip Talmadge, a former justice and former state legislator, wrote for The (Tacoma) News Tribune: "At that point in history, kindergarten often did not exist, nor did specialized educational programs. Many school districts did not have high schools!" Talmadge also noted: "Our state constitution says that the 'public school system shall include common schools and such high schools, normal schools, and technical schools as may hereafter be established.' " In other words, state law allows for evolution in the educational system, an evolution that was ignored in the court's ruling.

Which brings us back to the lawmakers — five Republicans and five Democrats — who filed a court briefing this week. Among their points, they wrote, "The court's opinion potentially undercuts legislative authority on the organization" of the state's schools. This is a specious argument, one that expresses the Legislature's continued frustration with the court. But if a law is unconstitutional, then it is unconstitutional. That leaves no room for arguments over jurisdictional sovereignty or the separation of powers.

In that regard, lawmakers missed their target while still raising salient questions.

Washington voters approved the establishment of up to 40 charter schools over a five-year period. One operated last year, and eight more opened this year (none have yet been approved in Clark County), combining to serve roughly 1,200 students. The court left few options for those students, referring that question back to King County Superior Court, but the Charter Schools Association said it has come up with enough money in private donations to keep the schools operating through this academic year.

The argument in favor of charter schools is that they provide more flexibility for meeting the needs of students than can be found in traditional public schools. Initiative 1240 ensured that charter schools would focus upon at-risk populations that often are poorly served by the public school system. It also included safeguards to shut down schools that don't live up to their promise. None of that was good enough for the Supreme Court.

In the end, it will be up to lawmakers to bring charter schools into compliance with the court's wishes. But in so doing, they must focus on the task at hand rather than complaining that the court is stepping on their toes.

